

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

UNITED STATES OF AMERICA,

Plaintiff,

v.

NICHOLAS LINDSEY,

Defendant.

Case No. 2:11-cr-00217-LDG (CWH)

ORDER

The defendant, Nicholas Lindsey, has moved for reconsideration (#94) of this Court's order remanding him into custody, pending his sentencing, subsequent to his conviction of nine counts of wire fraud and one count of aggravated identity theft. The Government filed a response (#97), and the defendant filed a reply (#104). The Court heard oral arguments on May 6, 2013.

Pursuant to 18 U.S.C. 3143(a), and as relevant to the defendant's convictions, the Court:

shall order that a person who has been found guilty of an offense and who is awaiting imposition or execution of sentence . . . be detained, unless the judicial officer finds by clear and convincing evidence that the person is not likely to flee or pose a danger to the safety of any other person or the community if released under section 3142(b) or (c).

1 Immediately subsequent to the defendant's conviction, the Government moved for his
2 remand into custody. In support of that motion, the Government argued, *inter alia*, the
3 nature of the defendant's offenses of conviction and his trial testimony, the substantial term
4 of imprisonment defendant likely faces and his lack of ties to any community, the
5 defendant's prior instances of failing to appear in court, the defendant's pending state
6 charge for identity theft, and the defendant's maintenance of an internet website selling
7 sports memorabilia, one page of which listed an e-mail and physical address for the
8 defendant and invited potential customers to "contact us" if they needed help or didn't like
9 placing orders over the internet. The government further asserted the defendant was also
10 associated with another sales website, apparently based in Canada, that it asserts mirrored
11 this "contact us" language.

12 The greater portion of the defendant's motion concerns the Government's assertions
13 and arguments regarding internet websites and the defendant's statements broadcast
14 through his twitter account.

15 Having given further consideration to whether remand is appropriate in this matter,
16 the Court has not taken into consideration the website based in Canada to which the
17 Government has referred, as there is not any evidence before the Court indicating an
18 association of that website with the defendant.

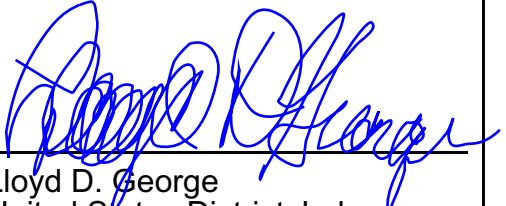
19 In addition, the Court has placed little, if any weight, on the defendant's maintenance
20 of the sales website that listed his e-mail and physical address, and which invited potential
21 customers to contact the defendant. The government argues, with some force, that the
22 maintenance of this website, and specifically its invitation to potential customers to directly
23 contact the defendant in connection with the purchase of items, was contrary to a condition
24 of release pending trial that prohibited the defendant from "employment in any position that
25 allows access to personal identifiers or credit information of others." As noted by the
26 defendant, however, his operation of this website was not surreptitious. Rather, he

1 operated the website with the consent and knowledge of the pre-trial officer supervising his
2 release pending trial.

3 In considering whether release or remand pending sentencing is appropriate, the
4 Court has placed greatest weight on the evidence received during trial. That evidence, in
5 light of the defendant's conviction, indicates that the defendant is likely to serve a
6 substantial term of imprisonment. The evidence received at trial included the defendant's
7 own testimony. In light of other evidence received at trial, both documentary and
8 testimonial, the Court finds that the defendant's testimony included falsehoods obvious to
9 the Court. The content and nature of that testimony left the Court firmly convinced of the
10 defendant's willingness to engage in deceitful conduct in any circumstance in which he
11 perceives such conduct will be to his own advantage. The evidence established that the
12 defendant had little or no hesitation to target strangers, friends, and family members with
13 his fraudulent conduct. The evidence further established that the defendant possessed a
14 willingness and ability to engage in a course and scheme of fraudulent conduct that, within
15 a very brief time span, provided him with a significant amount of physical wealth at the
16 expense of his victims. In short, the evidence received at trial, and in particular the
17 defendant's own testimony, precludes the Court from finding, by clear and convincing
18 evidence, that the defendant does not pose a danger to the safety of any other person or
19 the community, or that he is not likely to flee. Accordingly, for good cause shown,

20 THE COURT **ORDERS** that Defendant's Motion for Reconsideration of the Court's
21 Decision to Remand Pending Sentencing (#94) is DENIED.

22 DATED this 6 day of May, 2013.

23
24 
25 Lloyd D. George
26 United States District Judge